

incorporates the content of originally filed claim 1 and so does not alter the scope of claim 14. No new matter has been introduced and entry of the amendment is respectfully requested.

Rejection under statutory double patenting

Claims 1-13 have been rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-13 in U.S. Patent No. 5,683,899.

Instant claims 1-3 and 7-9 have been amended as indicated above. As such, pending claims 1-13 are no longer coextensive in scope with claims 1-13 of U.S. Patent No. 5,683,899. Applicant respectfully submits that the rejection has been obviated and may be properly withdrawn.

Rejection under nonstatutory double patenting

Claims 1-13 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-15 of U.S. Patent No. 5,643,745.

Applicant respectfully traverses the rejection and request its reconsideration in light of the above amendments to claims 1-3 and 7-9. Until the Examiner determines that a continued assertion of this rejection remains appropriate under the standards set forth at MPEP 804, subsection II B 1 (a), Applicant respectfully requests that the rejection be held in abeyance pending the determination of the claims as otherwise allowable. Upon the indication of allowable claims in combination with the maintenance of the instant rejection, Applicant will provide either a terminal disclaimer or suitable reasons for the rejection to be obviated.

Rejection under 35 U.S.C. § 102(b)

Claim 14 has been rejected under 35 U.S.C. § 102(b) as unpatentable over Ring (USP 4,727,037). Applicant has carefully reviewed the statement of the instant rejection as well as the cited reference and respectfully traverse the rejection as failing to have presented a *prima facie* case of anticipation.

A

A review of Ring reveals the complete absence of any discussion concerning heterokaryons, fungi, or the use of recombinant nucleic acid technology. Since all three of these elements are recited in the text of claim 14, it is simply not possible for Ring to teach every element found in claim 14 as required at MPEP 2131. As such, Applicant respectfully submits that no *prima facie* case of anticipation has been presented and the rejection should be withdrawn.

Rejection under 35 U.S.C. § 112, second paragraph

Claims 1-14 have been rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

Applicant thanks the Examiner for the suggestions to improve clarity. The claims have been amended to obviate all of the concerns raised. Thus Applicant respectfully requests that this rejection be withdrawn.

Conclusion


In light of the above amendments and remarks, Applicant respectfully submits that the claims may be indicated as allowable, and early indication to that effect is urged. The Examiner is welcome to contact the undersigned if he determines that further discussions would prove useful.

In the unlikely event that the Transmittal Letter is separated from this document and/or the Patent Office determines that a further extension and/or other relief or fees are required, Applicants hereby petition for any required relief including extensions of time, payment of claim fees, and the like, and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 239182001020. However, the Assistant Commissioner is **not** authorized to charge the cost of the Issue Fee to the Deposit Account.



Dated: August 24, 2000

Respectfully submitted,

By: 
Kawai Lau, Ph.D.
Registration No. 44,461

Morrison & Foerster LLP
12636 High Bluff Drive
Suite 300
San Diego, California 92130-2071
Telephone: (858) 720-5100
Facsimile: (858) 720-5125

A